XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक M.C.C.No. 128/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPLICANT M/s Shyamlal Agrawal, "Anand" Station Road, Raigarh (C.G.) through its attorney holder Shri Anand Agrawal

Vs.

RESPONDENT

1. South Eastern Coalfields Ltd., Through Chairman –Cum-Managing Director, Seepat Road, Bilaspur (C.G.)
2. The General Manager (Civil), South Eastern Coalfields Ltd., Seepat Road, Bilaspur (C.G.)
3. The Chief General Manager, South Eastern Coalfields Limited, PO: Gevra Colliery, Gevra Area, Distt. Korba

7-9-2007

Shri Sanjay Ku. Agrawal, Advocate for the applicant.

Dr. N.K.Shukla, Sr. Advocate with Shri Dilip Dubey, Advocate for the non-applicants.

The applicant has filed the instant petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for brevity hereinafter referred to as the Act) for appointment of Sole Arbitrator for adjudication of the dispute arising between the parties in relation to Agreement dated 8-12-1998.

Learned counsel for the applicant submits that the applicant was awarded contract of "Widening and black topping of main approach road from Gevra barrier to Laxman Project of Gevra Area vide letter dated 23-8-1998. The completion of period was 12 months to be reckoned from 10th day of issue letter of award or from the actual date of handing over of site, whichever is later. The work could not be completed within the stipulated period as during rainy season, no work was possible for that period. Even after completion of the work, payment against the executed work was not made till August 1999. The Application of Annexure A-5 dated 11-4-2000 of the petitioner for extension of time was allowed vide Annexure

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P-6 dated 18-5-2000 by the respondents and the time of completion of work was extended keeping management's legal right to impose penalty after review at the time of final extension of the work. The work could not be completed within the extended period and the applicant applied for further extension of time till 31st December, 2000 vide Annexure A-7. Ultimately the petitioner vide his letter dated 20th December, 2004 requested to undertake joint measurement and close the contract vide Annexure A-10 and he also raised a claim of Rs. 24,60 lacs. Subsequently reminders were sent and finally the applicant submitted their claim for a sum of Rs. 24.65 lacs vide their letter dated 22-2-2005 of Annexure A-13 and requested for appointment of arbitrator. However, the respondents did not appoint arbitrator and terminated the contract vide their communication dated 7-3-2005 of Annexure P-14. It has been submitted that the terms and conditions of the agreement contains Clause 16 which provides that in case of any ambiguity, the Civil Engineering manual shall be referred to and the provision in the CEM, shall prevail upon. It is argued that Clause 14 of the Civil Engineering Manual provides procedure of appointment of arbitrator. It was argued that since the competent authority i.e. Chairman-cum-Managing Director has failed to appoint arbitrator within a mandatory period of 30 days even after receipt of notice of Annexure A-13, the instant petition for appointment of arbitrator has been filed.

On the other hand, learned counsel for the non-applicants contended that the agreement between the parties does not contain arbitration clause. It is further submitted that the applicant was granted provisional extension of time for the above work for the period upto 11-5-2000 vide Annexure A-6 and thereafter notice dated 17-5-2000 of Annexure A-8 was sent to the applicant whereby the applicant was requested to start the work immediately and it was mentioned in the said notice that

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necessary action is being taken for processing application for extension of time for a further period of two months as requested by him and if the applicant fails to start the work within 15 days, action would be taken to terminate the contract and the letter may be treated as notice for the above purpose. Ultimately the contract was terminated on 7-3-2005 as the petitioner could not complete the work even within the extended period. Thus from the correspondence, it is evident that the claim is barred by limitation.

From perusal of the petition and the documents annexed with it, it is evident that the parties had entered into a contract agreement and the said agreement referred to application of Civil Engineering Manual and provision of Civil Engineering Manual shall prevail. Clause 14 of the Civil Engineering Manual filed by the petitioner along with an application for taking document on record dated 12-8-2005 provides for settlement of disputes through arbitration and as per procedure mentioned in Clause 14.2 of Civil Engineering Manual, on failure of settlement of dispute at the request of the contractor as per Clause 14.1 of the contract, the sole arbitrator could be appointed by Chairman –cum-Managing Director of the company or any other person authorized by him to appoint such arbitrator. From perusal of the documents annexed with the petition, it is observed that the petitioner entered into a correspondence with the engineer in-charge for settlement of such disputes/claims, however when the dispute could not be settled, request was made to the Chairman-cum-Managing Director vide Ex. A-13 and only after the above request was made, the contract was terminated by document of Ex. A-14 on 7-3-2005. So far as the objection of learned counsel for the non-applicants that the agreement does not contain arbitration clause is concerned, from bare perusal of the stipulation under Clause 16 of the arbitration agreement, it is clear that there is reference that provision

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of Civil Engineering Manual shall be applicable and from perusal of Clause 14 of Civil Engineering Manual, it is apparent that the settlement of the dispute is to be done through arbitration and as per the procedure prescribed under the agreement, appointment of arbitrator is to be made by Chairman-cum-Managing Director on the request of the contractor and since the Chairman-cum-Managing Director has failed to appoint arbitrator within mandatory period of 30 days, a case for appointment of arbitrator is made out.

Learned counsel for the parties submit that they have no objection if Hon'ble Shri Justice S.K. Tiwari, former Judge, High Court of M.P. and Kolkata is appointed as Sole Arbitrator.

Accordingly, I hereby appoint Hon'ble Shri Justice S.K. Tiwari, former Judge, High Court of M.P. and Kolkata as Sole Arbitrator in the matter, subject to his consent.

The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

Registry to intimate Hon'ble Shri Justice S.K. Tiwari, former Judge, High Court of M.P. and Kolkata about his appointment as Sole Arbitrator and to send all the papers along with address of the parties.

Parties are also directed to approach Hon'ble Shri Justice S.K Tiwari, former Judge who is presently residing at Vikash Nagar, 27 Kholi, near the bungalow of Hon'ble Chief Justice, Bilaspur and to submit papers and to take part in the arbitration proceedings.

Sd/-
Dhirendra Mishra
Judge

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29/9/06